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Letter & APR Staff

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APR *Prime*

PRESERVING OUR HERITAGE

SUSTAINING OUR FUTURE

Listening. Looking Forward. Farming Massachusetts.

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Dear Friends,

Over the past few years the Department has been reviewing what we learned during the Listening Sessions we held in 2018. The Listening Sessions were held

after we celebrated our 40th anniversary as part of our efforts to hear your ideas for the next stages of farmland protection in Massachusetts.

Over 165 people attended the four listening sessions and we recorded 70 comments: 12 from non-profit organizations, 3 from government entities and the remainder from 25 landowners and farmers and 19 interested citizens. The major themes, suggestions and issues were on the subjects of acquisition of new APRs, approvals for construction and activities; communication and transparency, and the sale and transfer of APRs.

Comments suggested program eligibility requirements should be changed to include a variety of farmland (not just land with 51% prime agricultural soils) and that aquaculture and equine operations should qualify. Other comments addressed the length of time to close a project; benchmarks and flow charts to outline the acquisition process from start to finish; a statewide farmland protection plan and the need for greater funding.

Regarding approvals for activities on APRs, comments addressed the construction of solar and alternative energy structures as long as they do not impact the protected farmland; and non-agricultural activities, such as weddings, bed and breakfasts and events that should be allowed as a way for farmers to stay economically viable.

Needs were expressed for greater communication from the Department, increased transparency, openness, and explanations for decisions and more staff availability to answer questions.

The area where there was probably the greatest concern had to do with the transfer of APRs and how the option to purchase at agricultural value (OPAV) and right of first refusal (ROFR) policies are currently implemented.

General concern regarding transfers of APR land included revision of the waiver process: the landowner/seller should be able to withdraw an offer for the Commonwealth to purchase the land, the importance of ROFRs and OPAVs to ensure that farmland is affordable for a farmer, and that beginning farmers should have an opportunity to buy farmland.

So how are we addressing some of the comments we heard? A focus of the program over the past year has been updating regulations in a public process to address the transfer of APRs. Further details are included in the newsletter but major changes include: a right for a landowner to withdraw a request for a waiver at any time up to a potential APR assignment, a right to appeal to the ALPC, and an automatic waiver provision. The regulations were promulgated August 1, 2019.

As part of our ongoing review of the APR acquisition process, we recruited a Land Acquisition Specialist to focus on the acquisition process and our relationship with the federal NRCS. We will continue to monitor our process to improve our efficiency.

Regarding comments on solar development, the Department as a result of your comments revised the existing policy by removing any requirement for an approval for roof mounted systems. We will continue to seek comments where we have any new policy development.

On the issue of communication around decisions and policies, well we hope to have a more regular release of this newsletter and we intend to conduct greater outreach to the community, are working on new materials and have plans for workshops. We are also building our ability to get out to visit with you by increasing the stewardship component of our program and have increased the number of Stewardship Planners. And starting in the new year we will be holding regional review meetings with the Board of Agriculture and the Agricultural Lands Preservation Committee that will be open to the public. Details inside. I hope I will see you there.

Best Regards,
John Lebeaux, MDAR Commissioner

Department Approvals: Certificates of Approval & Special Permits

Each APR document describes the process by which landowners may apply for various physical, operational, and ownership changes to their APR property. These Department Approvals include:

1. Certificates of Approval (COA), for physical changes to the property, including Ag. Structures, Excavation, Labor Housing, Dwelling Requests, Ag. Energy, or even Subdivision.
2. A Special Permit is issued for *non-agricultural activities* occurring on the APR property, may be issued for up to a five year period, and are limited in scope.

All Department Approvals must be applied for well in advance of any proposed changes. Upon receipt of an application, APR staff will conduct a site visit, review internally, and upon Commissioner's approval, issue an approval document. Each request is unique and APR documents vary in their requirements. Please contact APR staff for help in interpreting your APR document requirements.

APR Selling, Transferring and Planning

If you're thinking about selling APR land and aren't sure where to start or what to do, here are some suggestions:

Review your APR Document. (Can't find it? Contact Dorothy Du at 617-626-1741 or dorothy.du@mass.gov for a copy.)

Find out if your APR contains a Right of First Refusal (ROFR) or an Option to Purchase at Agricultural Value (OPAV). A Waiver from the Department is needed when an APR document contains language for a ROFR or an OPAV.

Landowners who intend to transfer or sell an APR property should contact MDAR immediately if they have OPAV/ROFR language in their APR document. If so, requirements can include: an appraisal, a farm plan, and an offer letter. Contact an attorney to help you through the land sale process. MDAR previews transfers/sales of APR property to assure farm viability in the future.

For recent updates check out Section 22.10 in the APR regulations here: www.mass.gov/regulations/330-CMR-2200-agricultural-preservation-restriction-program

APR staff are available to walk you through the MDAR process. Contact David Viale at David.Viale@mass.gov, 617-626-1202.

AIP Ten-Year Anniversary

For the past 10 years, MDAR's APR Improvement Program (AIP) has been providing farm viability assistance to farms protected through the APR Program to help keep them profitable and productive.

Farms selected to this annual program receive valuable business planning and technical assistance and may also receive a grant to implement projects identified in the plan to improve their farm operation. Recent AIP projects include wash and pack facilities, barn roof repairs, hay and equipment storage barns, farm roadway and drainage improvements, dairy infrastructure, farmstands, and orchard trellising.

Since it began in 2009, **AIP has provided \$5,825,000 in total grants (average of \$68,529 per farm) to 85 APR farms.** The program has also provided \$486,920 in business and technical assistance (average \$5,728 per farm).

For more information about AIP, visit the MDAR program website at www.mass.gov/service-details/apr-improvement-program-aip or contact Michael Parker at Michael.Parker@mass.gov or 413-726-2008. The next application is expected to be available in early spring 2020, dependent upon available funding.



A New APR!

MDAR is pleased to announce the preservation of the Windy Hill Farm, a 176-acre family farm located high on a hill on Hulett Hill Road in Sheffield and Brewers Branch in New Marlborough. Warren Wilcox has farmed the property for more than 50 years, gradually improving the land and making the fields larger by removing stone walls and hedgerows. Warren operated a dairy farm for many years before transitioning to beef cattle in the late 1980s. He continued to hay the fields to support his beef herd and rented the corn land to local dairy farmers.

Windy Hill Farm abuts Crystal Hill Farm in New Marlborough which is under a conservation restriction held by Berkshire Natural Resources Council. Windy Hill Farm was rented by a local dairy farmer, Morven Allen, who purchased the new APR land to continue its long and rich tradition of farming. The Department would like to congratulate Morven and deeply thank Warren for his cooperation during the preservation process and for his strong vision that "he doesn't want to think of the day when Windy Hill becomes houses".

MDAR accepts APR applications year round. Landowners should start the process as early as possible. Speak with a local MDAR Field Representative long before the annual application deadline in June.

APR Staff Changes

In May, we added another stewardship staff person, which allowed us to split the state into three regions. Caroline Raisler was hired to fill that role in the center of the state. Then in September, we said goodbye to Nick Pitel, our Western Massachusetts Stewardship Planner since 2015. We are currently working on filling the vacancy he left. For now here is who to contact if you have questions about your APR.

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The Kitchen Garden



Caroline Pam and Tim Wilcox started Kitchen Garden Farm in 2006 on one acre of land. This family farm has since expanded to grow certified organic vegetables on 50 acres in Sunderland and Whately. The farm grows more than 100 varieties of vegetables on the farm including heirloom tomatoes, specialty greens and roots, fresh herbs, and a wide variety of sweet and hot peppers. The farm is well known for their sriracha and salsas, sold at retailers across the country and available to sample at their popular annual Chilifest event in September, hosted at Mike's Maze at Warner Farm, also an APR farm.

In 2016, Kitchen Garden Farm received assistance updating their business plan and financial projections as well as a grant for on farm infrastructure improvements through participation in MDAR's APR Improvement Program. They used a \$75,000 AIP grant towards a new 40' by 96' year-round facility for washing, packing, and storage of vegetables with 2 walk-in coolers, electrical installation, and a loading dock. This new farm building replaced the garage that they had previously used to wash and pack their vegetables and had outgrown. The new facility provides increased storage capacity and increased efficiencies associated with

loading and shipping product and has allowed the farm to extend the season to keep employees year-round and reach new wholesale markets.

Kitchen Garden Farm received two other MDAR grants related to this project: \$25,000 from the MDAR Ag-Energy program in fiscal year 2016 for a 27.75kW PV System on the roof of the new building and \$11,277 in FY2017 from the Agricultural Food Safety Improvement Program for a new rinse conveyor and bagging table.

Caroline Pam and Tim Wilcox are quick to admit they wouldn't be where they are without the APR Program. They welcomed visitors to their farm as part of the APR Program 40th anniversary celebration at which time Caroline wrote the following about the APR program as a contributing writer to the Daily Hampshire Gazette: "Over the past 40 years, the APR program has preserved around 900 farms and over 70,000 acres in Massachusetts. We feel very fortunate to own a few of them. But there are thousands more acres of prime farmland still at risk of development, and the APR program is one of the best ways to prevent their permanent loss. Any loss of this precious resource is truly heartbreaking, especially when there are many farmers who are struggling to secure good land."



Farmland Restoration



Over the past 3 years, the Stewardship Assistance & Restoration on APRs program, also known as SARA, has provided APR farmers with over \$250,000.00 to help resolve stewardship restoration issues on their land in areas that were productive at the time the land was put into APR. John Bettencourt, Jr. from Mysti Brook Farm was awarded \$16,000.00 in 2018 to restore 5 acres of pasture that were overgrown and unable to be utilized. SARA funds were also allocated to dredge a pond on the farm that now provides water for livestock. SARA projects like John's are a true reinvestment in the land and will further support the viability of his APR farm into the future.

If you're not the original APR landowner and interested in APR farmland restoration contact Taylor Arsenault, Taylor.Arsenault@mass.gov 617-626-1348.



LOOKING FORWARD

These regional, public, MDAR events provide an opportunity for your input on how to improve and modernize the APR Program.

Evenings 6-8pm

January 7

Red Barn, Hampshire College
893 West Street, Amherst

January 14

Community Harvest Farm
37 Wheeler Road, North Grafton

January 21

Berkshire Athenaeum, Library
1 Wendell Ave, Pittsfield

January 28

Bristol County Agri. High School
Library Rm 212, Gilbert Hall
135 Center Street, Dighton

January 30

Essex North Shore
Agricultural/Technical School
Smith Hall Cafetorium
565 Maple Street, Danvers

Grant and Funding Programs

ALL grant/funding programs require advance application and approval, and are subject to available funding. Updates at mass.gov/agr.

APR Improvement Program (AIP) Business planning and technical assistance and grants for infrastructure improvements to help sustain active commercial farming on land already protected by the APR Program Michael.Parker@mass.gov 413-726-2008

Ag-Energy Grant Projects for renewable/alternative energy and/or energy efficiency solutions Gerald.Palano@mass.gov 617-626-1706

Agricultural Climate Resilience & Efficiencies (ACRE) Climate/economic resilience and MA Food Plan projects, such as no-till equipment, high tunnels, infrastructure, etc. Laura.Maul@mass.gov 617-626-1739

Agricultural Composting Assistance with management of ag composting operations Sean.Bowen@mass.gov 617-626-1724

Agricultural Environmental Enhancement (AEEP) Conservation practices that protect natural resources, such as drip irrigation and water reuse projects, fencing, and storage of fuel, manure, and pesticides. Laura.Maul@mass.gov 617-626-1739

Agricultural Products Safety Improvement Program (AFSIP) to reduce food safety risks Laura.Maul@mass.gov 617-626-1739

Dairy Farmer Tax Credit Offers state tax credit to help offset cyclical downturns in milk prices Myron.Inglis@mass.gov 617-626-1711

Farm Energy Discount Program 10% discounts on electric/gas bills for agriculture-eligible entities Joao.Tavares@mass.gov 617-626-1719

Farm Viability Enhancement Program (FVEP) For non-APR farmer technical and business planning assistance to expand, repair and modernize existing operations and improve marketing of food processing capacity Melissa.L.Adams@mass.gov 413-726-2001

Food Trust Program Increases local/healthy food access for the nutritionally underserved Rose.Arruda@mass.gov 617-626-1849

Food Ventures Initiatives for low/moderate income areas, Gateway Cities, and rural areas Rose.Arruda@mass.gov 617-626-1849

Matching Enterprise Grants for Agriculture (MEGA) Business planning assistance and matching grants for farm improvements for beginning farmers between 1 and 5 years in business beginnerfarmercoordinator@gmail.com 339-235-0859

Organic Cost Share Reimburses certified organic farmers and food processors up to 75% of certification costs
Keri.Cornman@mass.gov 617-626-1777

State-owned Farmland Licensing Land can be licensed for 5-year periods for farming Ronald.Hall@mass.gov 413-726-2002

Stewardship Assistance and Restoration on APRs Program (SARA) Restores farmland resources on APR properties
Taylor.Arsenault@mass.gov 617-626-1348

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Return Service
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APR Regulation Updates

Option to Purchase at Agricultural Value (OPAV) and Right of First Refusal (ROFR)

As of July 26, 2019, the Department has updated the APR regulations to include sections outlining the approach the Department must take when considering whether to exercise its options to purchase APR land at the time of sale. The new regulations outline the process that MDAR must follow when reviewing APR transfers, describe an automatic waiver process, a withdrawal option and also a right to appeal decisions to the ALPC for landowners. Here is a summary of how it works:

In 1987, the APR program implemented two tools that give the Commonwealth the ability to purchase APR protected farmland when it is put up for sale. These tools, called an “Option to Purchase at Agricultural Value” (OPAV) and “Right of First Refusal” (ROFR) enable, but do not require the Commonwealth to purchase APR protected land when it is up for sale. Since 1987, all APRs have included a purchase option:

- 1) APRs acquired 1987-1991 include a ROFR (97 APR Properties).
- 2) APRs acquired after 1991 include an OPAV (over 630 APR Properties).

In practice, unlike state agencies such as DCR and DFW, MDAR does not purchase APRs. Yet under certain circumstances MDAR may be required to transfer this right to purchase APRs at the time of sale to an interested buyer other than the original buyer. In the vast majority of transfers, MDAR chooses to “waive” its OPAV or ROFR and not become involved in the transfer.

When an APR landowner has a bona-fide offer from an interested buyer the APR landowner, where the APR document contains an OPAV or an ROFR provision, must notify MDAR of their intent to sell and offer the land to the Commonwealth to purchase. Along with this notification a landowner can also include a request that MDAR waive its right to purchase. Upon receiving the notification MDAR reviews the details of the sale and decides whether to waive its right or elect to utilize its right to purchase the land. If MDAR elects to utilize, or exercise, its right to purchase the APR, it will not actually purchase the land but will instead seek to transfer or assign its right to purchase to another person or entity, usually a farmer. The Department will do this through a public bidding process. Owners of APRs that do not include an OPAV or an ROFR provision do not have to notify the Department when selling their APR land.

Over the course of the 40-year history of the APR program, MDAR has waived its right to purchase the APR in the vast majority of cases. MDAR has only transferred its right on four occasions. This transfer of rights (also known as “Assignments”) is rare and has only occurred when MDAR’s review of a proposed sale has concluded that the proposed buyer was not a farmer or where the property was for sale at a greatly inflated price above agricultural value.



At the 2018 APR Listening Sessions, some comments about the waiver process for ROFRs and OPAVs were brought forward. Later, a state audit of the APR program provided recommended changes; one of these specifically gave a landowner the right to withdraw from the waiver process. Legislation subsequently mandated changes.

As of August 2019, MDAR updated the APR regulations to address how requests for waivers of ROFRs or OPAVs will be managed when submitted. The new regulations outline the process that MDAR must follow when reviewing APR sales; and describe an automatic waiver process, a withdrawal option and also a right to appeal decisions to the Agricultural Land Preservation Committee (ALPC) for landowners. The following is a summary of the main changes to the APR regulations:

- An Automatic Waiver requires that MDAR waive its right to purchase when all these criteria are met:
 - The landowner received a good faith offer and submitted to MDAR a certified copy of an executed Purchase and Sale Agreement
 - The landowner provides justification, deemed valid by MDAR, when a purchase price is 20% or greater than the *Fair Market Agricultural Land Value*. (*Agricultural Land Value does not include dwellings that may be on the APR or the value of an Agricultural Business*).
 - The buyer has been a farmer for at least two of the five years immediately preceding the landowner’s notice of intent to sell.
 - The buyer submits a Farm Business Plan for review by MDAR and presents a viable and achievable plan that is compatible with the APR and APR parcel.
 - The buyer has no record of a prior violation on an APR held by the Commonwealth. (MDAR may waive this requirement if the violation is deemed minor).

- If the criteria for an Automatic Waiver are not met, the Department may choose to issue a discretionary waiver when:
 - The buyer is a Farmer or Beginning Farmer or a non-profit corporation organized for the purposes of leasing land to one or more farmers or beginning farmers.
 - The buyer submits a Farm Business Plan for review by MDAR and MDAR determines the plan is complete and presents a viable and achievable plan that is compatible with the APR and APR parcel.
 - The buyer has no record of a prior significant APR violation on an APR held by the Commonwealth. (MDAR may waive this requirement if the violation is deemed minor).
 - The buyer provides justification, deemed valid by MDAR, when the purchase price is 20% or greater than the *Fair Market Agricultural Value*. (*Fair Market Agricultural Value includes dwellings that may be on the APR and the value of an Agricultural Business*).
- A landowner may withdraw from the Waiver process at any point prior to MDAR exercising its right or transferring its right to purchase.
- A landowner may appeal MDAR's decision regarding a waiver by contacting ALPC which will then hold a hearing to consider the appeal.
- MDAR is always available to discuss the waiver process with the landowner. Future APR documents will require a meeting with MDAR, the landowner and potential buyer to discuss the ROFR, OPAV and waiver before the sale of an APR.



MDAR will conduct outreach and education sessions in January 2020 to provide updates on the APR Program (see Page 3). The actual regulations are available at www.mass.gov/regulations/330-CMR-2200-agricultural-preservation-restriction-program and can be consulted for details. A landowner can also consult his/her APR document to review individual APR seller requirements. If you would like a printed copy of the regulations, please contact Dorothy Du at dorothy.du@mass.gov or 617-626-1741.

Solar Policy Update

The APR Program no longer requires approval for solar on roofs. Before we adopted this policy, approval was needed for roof-mounted systems. The Listening Sessions and public comments on the solar policy resulted in this change.

Ground-mounted-solar and other renewable-energy projects do require approval to ensure continued protection and preservation of agricultural lands. A project must meet prerequisites listed in the renewable energy policy at <https://www.mass.gov/doc/apr-renewable-energy-policy-2018>

Contact stewardship staff for approval and policy info.

Contact Gerry Palano for energy grant/funding info: Gerald.Palano@mass.gov 617-626-1706



Energy Grants

This reimbursement grant program funds agricultural energy projects in an effort to improve energy efficiency and the adoption of alternative energy by Massachusetts farms.

The goal of the program is for farms to become more sustainable and for Massachusetts to maximize the environmental and economic benefits from these technologies.

From July 30, 2018 to July 1, 2019 MDAR awarded \$955,000 to 40 farms and 12 of those were APRs!

New applications will open in the Spring of 2020. Contact MDAR for an application BEFORE signing vendor paperwork and before beginning a project to confirm eligibility for an energy grant.